

Chapter 251

(House Bill 1417)

AN ACT concerning

Unemployment Insurance – Work Sharing

FOR the purpose of altering certain provisions that apply to the work sharing unemployment insurance program; clarifying the intent of the program; requiring that a decision by the Secretary of Labor, Licensing, and Regulation to disapprove a work sharing plan shall identify the reasons for the disapproval; altering the requirements for a work sharing plan; prohibiting the Secretary from approving certain work sharing plans; altering certain eligibility criteria for certain affected employees; altering the computation of work sharing benefits; authorizing certain individuals to be paid certain unemployment insurance benefits under certain circumstances; providing that a decision of the Secretary to revoke approval of a work sharing plan is final and not subject to appeal; altering the benefit charging provisions for employing units that participate in work sharing; providing that certain affected employees are eligible to receive certain extended benefits; ~~providing that certain provisions of federal unemployment insurance law shall be given effect under certain circumstances; providing for the impact of certain provisions of State law that are in conflict with certain provisions of federal unemployment insurance law;~~ defining certain terms; altering certain definitions; and generally relating to the work sharing unemployment insurance program.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section ~~8-611(d)~~, 8-1201 through ~~8-1204~~ 8-1204, and 8-1206 through 8-1208

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

Article – Labor and Employment

Section ~~8-611(b) and (g) and~~ 8-1205

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

BY adding to

Article – Labor and Employment

Section 8-1209 ~~and 8-1210~~

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Labor and Employment

8–611.

(b) Except as provided in subsection (d) of this section, the Secretary shall charge pro rata against the earned rating record of each base period employer all regular benefits and the share of extended benefits required under subsection (c) of this section in the same proportion as the wages paid by the base period employer is to the total wages of the claimant during the base period, and rounded to the nearest dollar.

(d) The Secretary shall charge all regular and extended benefits paid to a claimant against the earned rating record of an employing unit that caused the claimant’s unemployment during any period in which the unemployment is caused by[:

(1) participation of the employing unit in a work sharing unemployment insurance program that the Secretary has approved; or

(2)] a shutdown of the employing unit:

[(i)] (1) to have employees take their vacations at the same time;

[(ii)] (2) for inventory;

[(iii)] (3) for retooling; or

[(iv)] (4) for any other purpose that is primarily other than a lack of work and that causes unemployment for a definite period.

(g) The Secretary may not charge the earned rating record of an employing unit that has employed a claimant on a continuous part–time basis and continues to do so while the claimant is separated from other employment and is eligible for benefits because of that separation.

8–1201.

(a) In this subtitle the following words have the meanings indicated.

(b) “Affected employee” means an individual **TO WHOM AN APPROVED WORK SHARING PLAN APPLIES, HIRED ON A FULL–TIME BASIS OR AS A**

PERMANENT PART-TIME WORKER, who has been continuously on the payroll of an affected unit for at least 3 months immediately before the employing unit submits a work sharing plan.

(c) “Affected unit” means a specific plant, department, shift, or other definable unit of an employing unit:

- (1) that has at least 2 employees; and
- (2) to which an approved work sharing plan applies.

(d) “Approved work sharing plan” means a plan that satisfies the purpose under § 8-1202 of this subtitle and receives the approval of the Secretary.

(e) “Employer association” means:

(1) an association that is a party to a collective bargaining agreement under which it may negotiate a work sharing plan; or

(2) an association authorized by all of its members to become a party to a work sharing plan.

(F) “HEALTH AND RETIREMENT BENEFITS” MEANS EMPLOYER-PROVIDED HEALTH BENEFITS AND RETIREMENT BENEFITS UNDER A DEFINED BENEFIT PENSION PLAN AS DEFINED IN § 414(J) OF THE INTERNAL REVENUE CODE OR CONTRIBUTIONS UNDER A DEFINED CONTRIBUTION PLAN AS DEFINED IN § 414(I) OF THE INTERNAL REVENUE CODE THAT ARE INCIDENTS OF EMPLOYMENT IN ADDITION TO THE CASH REMUNERATION EARNED.

(G) “INTERMITTENT EMPLOYMENT” MEANS EMPLOYMENT THAT IS NOT CONTINUOUS, BUT MAY CONSIST OF PERIODIC INTERVALS OF WEEKLY WORK AND INTERVALS OF NO WEEKLY WORK.

[(f)] (H) “Normal weekly work hours” means [the lesser of:

(1) the number of hours in a week that an employee usually works for the regular employing unit; or

(2) 40 hours] **THE USUAL HOURS OF WORK FOR A FULL-TIME OR REGULAR PART-TIME WORKER IN THE AFFECTED UNIT WHEN THAT UNIT IS OPERATING ON ITS REGULAR BASIS, NOT TO EXCEED 40 HOURS AND NOT INCLUDING OVERTIME WORK.**

(I) “TEMPORARY EMPLOYMENT” MEANS EMPLOYMENT IN WHICH AN EMPLOYEE:

(1) IS EXPECTED TO REMAIN IN A POSITION FOR ONLY A LIMITED PERIOD OF TIME; OR

(2) IS HIRED BY A TEMPORARY AGENCY OR OTHER ENTITY TO FILL A GAP IN THE EMPLOYER’S WORKFORCE.

[(g)] (J) (1) “Work sharing benefit” means benefits payable to an affected employee for work performed under an approved work sharing plan.

(2) “Work sharing benefit” includes benefits payable to a federal civilian employee or former service member under Title 5, Chapter 85 of the United States Code.

(3) “Work sharing benefit” does not include benefits that are otherwise payable under this title.

[(h)] (K) “Work sharing employer” means an employing unit or employer association for which a work sharing plan has been approved.

[(i)] (L) “Work sharing plan” means a plan of an employing unit or employer association under which:

(1) normal weekly work hours of affected employees are reduced **TO AVOID LAYOFFS**; and

(2) affected employees share the work that remains after the reduction.

8–1202.

(A) The work sharing unemployment insurance program seeks to:

(1) preserve the jobs of employees and the work force of an employer during **PERIODS OF** lowered economic activity by reduction in work hours or workdays rather than by a layoff of some employees while other employees continue their normal weekly work hours or workdays; and

(2) ameliorate the adverse effect of reduction in business activity by providing benefits for the part of the normal weekly work hours or workdays in which an employee does not work.

(B) THE WORK SHARING UNEMPLOYMENT INSURANCE PROGRAM IS NOT INTENDED TO SUBSIDIZE:

(1) NORMAL OR EXPECTED FLUCTUATIONS IN ECONOMIC ACTIVITY THAT ARE AN INHERENT PART OF AN INDUSTRY OR OCCUPATION; OR

(2) AN EMPLOYER'S USUAL OPERATION ON A LONG-TERM BASIS.

8-1203.

(a) An employing unit or employer association that wishes to participate in the work sharing unemployment insurance program shall submit to the Secretary a written work sharing plan that the employing unit or representative of the employer association has signed.

(b) Within 15 days after receipt of a work sharing plan, the Secretary shall give written approval or disapproval of the plan.

(C) A DECISION BY THE SECRETARY TO DISAPPROVE A WORK SHARING PLAN SHALL IDENTIFY THE REASONS FOR THE DISAPPROVAL.

[(c) (D) (1) When the Secretary disapproves a work sharing plan, the decision is final and may not be appealed.

(2) After 15 days after the Secretary disapproves a work sharing plan, the employing unit or employer association may submit a new work sharing plan.

8-1204.

(A) [The] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE Secretary shall approve a work sharing plan that meets the following requirements:

(1) [the work sharing plan shall apply to:

(i) at least 10% of the employees in the affected unit; or

(ii) at least 20 employees in an affected unit in which the work sharing plan applies equally to all affected employees.

(2) the normal weekly work hours of affected employees in the affected unit shall be reduced by at least 10% but, unless waived by the Secretary, the reduction may not exceed 50%.

(3)] a work sharing plan shall:

(i) identify the affected unit;

(ii) identify each employee in the affected unit by name, Social Security number, **NORMAL WEEKLY WORK HOURS**, and any other information that the Secretary requires;

(iii) specify **THE REQUESTED START DATE OF THE WORK SHARING PLAN THAT, UNLESS WAIVED BY THE SECRETARY FOR GOOD CAUSE, SHALL BEGIN ON A SUNDAY NO EARLIER THAN 7 DAYS AFTER THE PLAN IS SUBMITTED AND** an expiration date that is not more than 6 months after the effective date of the work sharing plan;

(IV) PROVIDE FOR REDUCTION OF NORMAL WEEKLY WORK HOURS OF AFFECTED EMPLOYEES IN EACH AFFECTED UNIT WHICH SHALL BE:

1. APPLIED EQUALLY TO ALL EMPLOYEES IN THE AFFECTED UNIT FOR ALL WEEKS OF THE PLAN UNLESS WAIVED BY THE SECRETARY FOR GOOD CAUSE; AND

2. AT LEAST 20% ~~BUT, UNLESS WAIVED BY THE SECRETARY,~~ BUT NOT MORE THAN 50% OF THE NORMAL WEEKLY WORK HOURS OF EACH EMPLOYEE;

(V) IDENTIFY ANY WEEK DURING THE TERM OF THE PLAN FOR WHICH THE EMPLOYER REGULARLY PROVIDES NO WORK FOR ITS EMPLOYEES;

[(iv)] (VI) specify the effect that work sharing will have on the fringe benefits of each employee in the affected unit including:

1. [health insurance for hospital, medical, dental, and similar services;

2. retirement benefits under benefit pension plans as defined in § 3(35) of the federal Employee Retirement Income Security Act of 1974;

3.] holiday and vacation pay;

[4.] 2. sick leave; and

[5.] 3. similar advantages;

(VII) INCLUDE AN ESTIMATE OF THE NUMBER OF EMPLOYEES WHO WOULD BE LAID OFF IN THE ABSENCE OF THE PLAN AND THE AGGREGATE NORMAL WEEKLY WORK HOURS FOR THOSE EMPLOYEES THAT MUST BE EQUIVALENT TO THE AGGREGATE HOURS REDUCED UNDER THE WORK SHARING PLAN;

(VIII) INCLUDE A BRIEF DESCRIPTION OF THE CIRCUMSTANCES REQUIRING THE USE OF WORK SHARING TO AVOID LAYOFFS;

[(v)] (IX) [certify] CONTAIN THE EMPLOYER'S CERTIFICATION that:

1. each affected employee has been continuously on the payroll of the employing unit for 3 months immediately before the date on which the employing unit or employer association submits the work sharing plan; and

2. the total reduction in normal weekly work hours **UNDER THE WORK SHARING PLAN** is instead of **TEMPORARY OR PERMANENT layoffs, OR BOTH**, that would have affected at least [the number of employees specified in item (1) of this section] **ONE EMPLOYEE** and that would have resulted in an equivalent reduction in work hours;

3. PARTICIPATION IN THE PLAN AND ITS IMPLEMENTATION IS CONSISTENT WITH THE EMPLOYER'S OBLIGATIONS UNDER APPLICABLE FEDERAL AND STATE LAW;

4. THE EMPLOYER WILL NOT HIRE NEW EMPLOYEES IN, OR TRANSFER EMPLOYEES TO, THE AFFECTED UNIT WHILE THE PLAN IS IN EFFECT;

5. THE WORK SHARING PLAN WILL NOT SERVE AS A SUBSIDY OF TEMPORARY OR INTERMITTENT EMPLOYMENT; AND

6. HEALTH BENEFITS AND RETIREMENT BENEFITS, IF ANY, PROVIDED TO ANY EMPLOYEE WHOSE USUAL WEEKLY WORK HOURS ARE REDUCED UNDER THE WORK SHARING PLAN WILL CONTINUE TO BE PROVIDED:

A. TO EACH EMPLOYEE PARTICIPATING IN THE WORK SHARING PLAN UNDER THE SAME TERMS AND CONDITIONS AS THOUGH THE USUAL WEEKLY WORK HOURS OF THE EMPLOYEE HAD NOT BEEN REDUCED; OR

B. TO THE SAME EXTENT AS OTHER EMPLOYEES NOT PARTICIPATING IN THE PROGRAM; and

[(vi)] (X) 1. contain the written approval of[

1.] the collective bargaining agent for each collective bargaining agreement that covers any affected employee in the affected unit; [or] **AND**

2. [if there is no agent, a representative of the employees or employee association in the affected unit] **FOR ANY AFFECTED EMPLOYEE NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT:**

A. DESCRIBE HOW NOTICE OF THE PLAN WILL BE PROVIDED TO EMPLOYEES WHO WILL BE SUBJECT TO THE PLAN; OR

B. IF ADVANCE NOTICE TO EMPLOYEES SUBJECT TO THE PLAN IS NOT FEASIBLE, PROVIDE A DETAILED EXPLANATION AS TO WHY ADVANCE NOTICE IS NOT FEASIBLE.

(2) AN EMPLOYER IS DEEMED TO HAVE SATISFIED ITS OBLIGATION TO PROVIDE THE CERTIFICATE REQUIRED UNDER ITEM (1)(IX)6 OF THIS SUBSECTION IF THE EMPLOYER CERTIFIES THAT A REDUCTION IN HEALTH BENEFITS AND RETIREMENT BENEFITS SCHEDULED TO OCCUR WHILE THE PLAN IS IN EFFECT APPLIES TO EMPLOYEES WHO ARE PARTICIPATING IN WORK SHARING IN THE SAME MANNER AS IT APPLIES TO THOSE EMPLOYEES WHO ARE NOT PARTICIPATING IN WORK SHARING.

[(4)] (3) if a work sharing plan serves the work sharing employer as a transitional step to permanent staff reduction, the work sharing plan shall contain a reemployment assistance plan for each affected employee that the work sharing employer develops with the Secretary.

[(5)] (4) the work sharing employer shall agree to:

(i) submit to the Secretary reports that are necessary to administer the work sharing plan; and

(ii) allow the Department to have access to all records necessary:

1. to verify the work sharing plan before its approval;

[and]

2. to monitor and evaluate the application of the work sharing plan after its approval; **AND**

3. TO COMPLY WITH ANY OTHER REQUIREMENT THE SECRETARY DEEMS NECESSARY THAT IS CONSISTENT WITH THIS SUBTITLE AND FEDERAL UNEMPLOYMENT INSURANCE LAW.

[(6)] (B) [a work sharing plan may not subsidize an employing unit that traditionally has used employees who work less than 30 hours a week.] THE SECRETARY MAY NOT APPROVE A WORK SHARING PLAN THAT:

(1) IS SUBMITTED BY A NEW EMPLOYER AS DEFINED IN § 8-609 OF THIS TITLE;

(2) IS SUBMITTED BY AN EMPLOYER THAT HAS FAILED TO:

(I) FILE QUARTERLY WAGE REPORTS OR OTHER REPORTS REQUIRED UNDER THIS TITLE; OR

(II) PAY ALL CONTRIBUTIONS, ASSESSMENTS, REIMBURSEMENTS IN LIEU OF CONTRIBUTIONS, INTEREST, AND PENALTIES DUE THROUGH THE DATE OF THE EMPLOYER'S APPLICATION; OR

(3) IS INCONSISTENT WITH THIS SUBTITLE AND THE PURPOSE OF WORK SHARING.

8-1205.

(a) An approved work sharing plan may be modified if the modification meets the requirements for approval under § 8-1204 of this subtitle and the Secretary approves the modification.

(b) An employing unit may add an employee to a work sharing plan under this section when the employee has been continuously on the payroll for 3 months.

(c) An approved modification of a work sharing plan may not change its expiration date.

8-1206.

(a) An affected employee is eligible under § 8-1207 of this subtitle to receive work sharing benefits for each week in which the Secretary determines that the affected employee:

(1) is able to work; and

(2) is available for [more hours of work or full-time work] **THE EMPLOYEE'S NORMAL WEEKLY WORK HOURS** for the work sharing employer.

(B) FOR PURPOSES OF SUBSECTION (A) OF THIS SECTION, AN AFFECTED EMPLOYEE IS ABLE AND AVAILABLE TO WORK FOR THE WORK SHARING EMPLOYER FOR ALL HOURS IN WHICH THE EMPLOYEE PARTICIPATES IN TRAINING, INCLUDING EMPLOYER-SPONSORED TRAINING OR WORKER TRAINING FUNDED UNDER THE WORKFORCE INVESTMENT ACT OF 1998, TO ENHANCE JOB SKILLS IF THE PROGRAM HAS BEEN APPROVED BY THE SECRETARY AND THE TRAINING HAS BEEN AUTHORIZED BY THE EMPLOYER.

[(b)] (C) (1) An affected employee who otherwise is eligible may not be denied work sharing benefits for failure to actively seek work under § 8-903(a)(1)(iii) of this title from a person other than the work sharing employer.

(2) An affected employee may not be disqualified under § 8-1005 of this title for refusal to apply for or accept suitable work from a person other than the work sharing employer.

[(c)] (D) An affected employee who is otherwise eligible for benefits:

(1) is considered to be unemployed for the purpose of the work sharing unemployment insurance program; and

(2) is not subject to the requirement under § 8-801 of this title that an individual be unemployed.

[(d)] (E) Unless the result would be inconsistent with this subtitle, the provisions of this title that apply to a claim for and payment of other benefits apply to a claim for and payment of work sharing benefits.

8-1207.

(a) Work sharing benefits shall be determined in accordance with this section.

(b) (1) To compute work sharing benefits:

(i) the weekly benefit amount of an affected employee under § 8-803 of this title shall be multiplied by the percentage of reduction in the employee's normal weekly work hours under the approved work sharing plan; and

(ii) the hours for which an affected employee receives [holiday or vacation pay] **PAID LEAVE** shall be counted as hours worked **IF THE AFFECTED EMPLOYEE PERFORMED SOME WORK DURING THE WORK WEEK.**

(2) IF THE AFFECTED EMPLOYEE WAS ABSENT FROM WORK WITHOUT THE APPROVAL OF THE EMPLOYER OR USED UNPAID LEAVE, THE AFFECTED EMPLOYEE WILL NOT BE CONSIDERED TO HAVE WORKED ALL THE HOURS OFFERED BY THE WORK SHARING EMPLOYER IN A WORK WEEK, AND THE EMPLOYEE SHALL BE DENIED WORK SHARING BENEFITS FOR THAT WEEK.

[(2)] (3) The product obtained under paragraph (1)(i) of this subsection shall be rounded to the next lower dollar.

(c) (1) An affected employee is eligible to receive not more than **[26] 52** weeks of work sharing benefits during each benefit year.

(2) The total amount of benefits payable under Subtitle 8 of this title and work sharing benefits payable under this section may not exceed the total for the benefit year under § 8–808(c) of this title.

(d) An allowance for a dependent is payable to an affected employee in accordance with § 8–804 of this title.

(e) An affected employee who receives a work sharing benefit is not subject to the limitation on benefits for partial unemployment under § 8–803(d) of this title.

(f) During a week in which an individual who otherwise is eligible for benefits does not work for the work sharing employer:

(1) the individual shall be paid benefits in accordance with Subtitle 8 of this title; and

(2) the week does not count as a week for which a work sharing benefit is received.

(g) **[(1)]** During a week in which an **[employee earns wages] INDIVIDUAL PERFORMS WORK** under an approved work sharing plan and **[other wages, the work sharing benefit shall be reduced by the same percentage that the combined wages are of wages for normal weekly work hours if the other wages:**

(i) exceed the wages earned under the approved work sharing plan; and

(ii) do not exceed 90% of the wages the individual earns for normal weekly work hours.

(2) The computation under paragraph (1) of this subsection applies regardless of whether the employee earned the other wage from the work sharing employer or another employer.] **PERFORMS WORK FOR ANOTHER EMPLOYER, THE INDIVIDUAL'S WORK SHARING BENEFIT SHALL BE COMPUTED IN THE SAME**

MANNER AS IF THE INDIVIDUAL WORKED SOLELY FOR THE WORK SHARING EMPLOYER.

(H) AN INDIVIDUAL WHO IS NOT PROVIDED ANY WORK BY THE WORK SHARING EMPLOYER DURING A WEEK IN WHICH A WORK SHARING PLAN IS IN EFFECT, BUT WHO WORKS FOR ANOTHER EMPLOYER AND IS OTHERWISE ELIGIBLE FOR UNEMPLOYMENT BENEFITS, MAY BE PAID REGULAR BENEFITS FOR THAT WEEK UNDER SUBTITLE 8 OF THIS TITLE SUBJECT TO THE DISQUALIFYING INCOME REQUIREMENTS OF § 8-803(D) OF THIS TITLE AND OTHER PROVISIONS APPLICABLE TO CLAIMS FOR REGULAR COMPENSATION.

(I) AN INDIVIDUAL WHO IS PROVIDED LESS THAN 50% OF THE INDIVIDUAL'S NORMAL WEEKLY WORK HOURS WITH THE WORK SHARING EMPLOYER DURING A WEEK IN WHICH A WORK SHARING PLAN IS IN EFFECT, AND IS OTHERWISE ELIGIBLE FOR UNEMPLOYMENT BENEFITS, MAY BE PAID REGULAR BENEFITS FOR THAT WEEK UNDER SUBTITLE 8 OF THIS TITLE SUBJECT TO THE DISQUALIFYING INCOME REQUIREMENTS OF § 8-803(D) OF THIS TITLE AND OTHER PROVISIONS APPLICABLE TO CLAIMS FOR REGULAR COMPENSATION.

[(h)] (J) While an affected employee applies for or receives work sharing benefits, the affected employee is not eligible for:

- (1) extended benefits;
- (2) supplemental federal unemployment compensation; or
- (3) benefits under any other federal or State program.

8-1208.

(A) The Secretary may revoke approval of an approved work sharing plan for good cause, including:

- (1) conduct or an occurrence that tends to defeat the intent and effective operation of the approved work sharing plan;
- (2) failure to comply with an assurance in the approved work sharing plan;
- (3) unreasonable revision of a productivity standard of the affected unit; and

(4) violation of a criterion on which the Secretary based approval of the approved work sharing plan.

(B) THE DECISION OF THE SECRETARY TO REVOKE APPROVAL OF A WORK SHARING PLAN IS FINAL AND IS NOT SUBJECT TO APPEAL.

8-1209.

AN AFFECTED EMPLOYEE WHO HAS RECEIVED ALL OF THE WORK SHARING BENEFITS OR COMBINED UNEMPLOYMENT BENEFITS AND WORK SHARING BENEFITS AVAILABLE IN A BENEFIT YEAR SHALL BE:

(1) CONSIDERED AN EXHAUSTEE FOR PURPOSES OF EXTENDED BENEFITS, AS PROVIDED UNDER § 8-1104 OF THIS TITLE; AND

(2) IF OTHERWISE ELIGIBLE, SHALL BE ELIGIBLE TO RECEIVE EXTENDED BENEFITS UNDER SUBTITLE 11 OF THIS TITLE.

~~**§ 1210.**~~

~~(A) TO THE EXTENT PROVISIONS AND DEFINITIONS IN FEDERAL UNEMPLOYMENT INSURANCE LAW ARE IN CONFLICT WITH, OR SUPPLEMENT THE PROVISIONS OF THIS SUBTITLE OR THE CHARGING PROVISIONS APPLICABLE TO WORK SHARING IN § 8-611 OF THIS TITLE, THE PROVISIONS AND DEFINITIONS OF FEDERAL UNEMPLOYMENT INSURANCE LAW SHALL APPLY AND SHALL BE GIVEN EFFECT.~~

~~(B) IF ANY PROVISION OR DEFINITION IN THIS SUBTITLE OR THE CHARGING PROVISION APPLICABLE TO WORK SHARING IN § 8-611 OF THIS TITLE IS DETERMINED TO BE IN CONFLICT WITH FEDERAL UNEMPLOYMENT INSURANCE LAW, THAT PROVISION SHALL BE INVALID AND SHALL NOT AFFECT ANY OTHER PROVISION OF THIS SUBTITLE WHICH CAN BE GIVEN FULL EFFECT.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2014.

Approved by the Governor, April 14, 2014.